

ST 02-0084-GIL 04/11/2002 TELECOMMUNICATIONS EXCISE TAX

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495. (This is a GIL).

April 11, 2002

Dear Xxxxx:

This letter is in response to your letter dated January 16, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

My company is a Telecommunication Service provider. We are located in STATE and are beginning a start up operation in Illinois. We set up two companies. One will be a regulated utility company offering local and long distance telephone service. It also will lease access to our PBX switch for outside dial tone in the form of regulated basic service. The other company will be our service company and will lease equipment such as telephones and voice mail systems. It will lease access to our PBX switch for inside dial tone in the form of unregulated basic service. We will also bill for labor and materials when we install cabling and wiring, move phones etc. and management reports (phone call detail).

In speaking with the Illinois tax help-line staff I came to the conclusion that I am required to file telecommunications excise and infrastructure maintenance tax returns on all my service company's revenues except voice mail rental and management reports. In addition, I should file these tax returns for my utility company for gross income from regulated basic service charges, local and long distance call, and directory assistance etc.

Please confirm my conclusions via return mail. If you need additional information I can be reached at ###.

Thank you in advance for your assistance.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

Gross Charges, however, does not include charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges (Section 2(a)(4) of the Act). To be exempt, the charges for customer equipment must be disaggregated and separately identified from other charges in the books and records of the retailer. See Section 495.100(b). Such items of customer equipment may be leased, rented or sold to one customer or a group of customers without being included in the gross charges subject to Telecommunications Excise Tax. It is important to note, however, that Retailers' Occupation or Use Taxes may be incurred.

If the charges for equipment are separately identified and disaggregated, the equipment and possibly the installation charges will be subject to Retailers' Occupation Tax. See the enclosed copy of Section 130.450. As you can see from this regulation, installation charges are included in gross receipts subject to Retailers' Occupation Tax ("ROT") unless they are the subject of a separate agreement. A separate agreement would include an invoice that separately lists the installation charge and is also signed by the customer. Use Tax is incurred when a telecommunications retailer purchases equipment for use in providing telecommunications services.

As a general proposition, charges for voice mail services are not subject to Telecommunications Excise Tax if they are disaggregated from transmission charges and separately identified in the books and records of the retailer. Regulation 86 Ill. Adm. Code 495.100(c) states in part that: "Charges for answering services, for example, whether provided electronically or by live operators, represent charges for the storage of information or data for subsequent retrieval, and are not subject to tax, provided that these charges, if provided in connection with taxable telecommunications, are disaggregated and separately identified in the books and records of the retailer." If voice mail charges are not disaggregated from transmission charges, they are subject to tax.

When the same retailer provides voice mail and transmission services, the voice mail charges are subject to tax unless they are disaggregated and separately identified from the transmission charges in the books and records of the retailer. When voice mail and transmission services are provided by separate providers, and billed by the separate providers, the voice mail charges would meet the disaggregation requirement and would not be included in gross charges subject to tax. When voice mail and transmission services are provided by separate providers but charges for both are billed by one of the providers, the voice mail charges would meet the disaggregation requirement and would not be included in gross charges subject to tax as long as they can be separately identified from the transmission charges in the books and records of the providers.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) (35 ILCS 635/1 et seq.) provides for the imposition of various fees upon telecommunications retailers.

Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers, as that term is defined in 35 ILCS 635/10, "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for

telecommunications, other than wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b).) Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay "with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality...." (35 ILCS 635/15(c).) These fees are collected, enforced and administered by the Illinois Department of Revenue. (35 ILCS 635/25(b))

Section 20 of the Act provides that municipalities may impose a municipal infrastructure maintenance fee upon telecommunications retailers. This fee is based upon gross charges charged by the telecommunications retailers to service addresses in the municipality for telecommunications originating or received in the municipality. This fee is collected, enforced, and administered by the municipality imposing the fee. (35 ILCS 635/25(c).)

Illinois municipalities are also authorized to impose a municipal telecommunications tax. (See 65 ILCS 5/8-11-17.) The tax is imposed on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by a person at a rate not to exceed 5% of the gross charges for such telecommunications purchased at retail by such person. (See 65 ILCS 5/8-11-17(a)(1) and 65 ILCS 5/8-11-17(a)(2).) This tax may only be imposed if the municipality does not have in effect an occupation tax imposed on persons engaged in the business of transmitting messages by means of electricity as authorized by Section 8-11-2 (65 ILCS 5/8-11-2) of the Illinois Municipal Code. The municipality imposing the tax provides for its administration and enforcement, not the Illinois Department of Revenue. Therefore, questions regarding this tax should be addressed to the individual municipalities imposing it. There is no equivalent statute for county governments.

In addition, the Emergency Telephone System Act provides that "[t]he corporate authorities of any municipality or any county may, subject to the limitations of subsections (c), (d), and (h), and in addition to any tax levied pursuant to Section 8-11-2 of the Illinois Municipal Code, impose a monthly surcharge on billed subscribers of network connection provided by telecommunication carriers engaged in the business of transmitting messages by means of electricity originating within the corporate limits of the municipality or county imposing the surcharge at a rate per network connection determined in accordance with subsection (c)." (See 50 ILCS 750/15.3(a) and (c).) "The surcharge authorized by this Section shall be collected from the subscriber by the telecommunications carrier providing the subscriber the network connection as a separately stated item on the subscriber's bill." (50 ILCS 750/15.3(f).) This surcharge is paid to the municipality, county or Joint Emergency Telephone System Board. (See 50 ILCS 750/15.3(g).) Questions regarding the surcharge should be addressed to the municipality or county imposing it.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.